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**ZBIGNIEW RAU, PRZEMYSŁAW ŻURAWSKI
VEL GRAJEWSKI, MAREK TRACZ-TRYNIECKI
(EDS.), *MAGNA CARTA: A CENTRAL EUROPEAN
PERSPECTIVE OF OUR COMMON HERITAGE
OF FREEDOM***

Routledge, London–New York 2016, 233 p.

This volume is a unique contribution to scholarship on constitutional traditions and their early development in Central Europe. Prepared to mark the 800th anniversary of the ratification of the Magna Carta by King John in 1215, this collection of scholarly articles and documents reflects upon the common European heritage of constitutionalism and liberty for which the Magna Carta is seen a starting point. Each of four chapters discusses constitutional developments that took place in Hungary, the Czech Republic, Poland and Lithuania. They are illustrated by key legal documents issued between the thirteenth and the sixteenth centuries, some of which have been translated into English for the first time. The major theme presented in all the chapters is the role of law in limiting political power and securing space for individual liberty. It emphasizes that Central European political communities developed political and legal cultures in the early modern period which were supportive of the institutional and constitutional frameworks that kept absolutism at bay.

Western scholars tend to emphasize the impact that Magna Carta had on Anglo-Saxon constitutionalism: *The rebel barons who imposed Magna Carta on King John saw it as a practical solution to political problems, not a statement of legal precepts. Yet it sets forth principles of the rule of law that won recognition as fundamental law, part of the common stock of both British and American political thought that has spread throughout the modern world.*¹ Similar traditions that were developed in Central Europe are often

¹ M.R. Madden, *Political Theory and Law in Medieval Spain*, Clark, NJ 2005, p. 10.

overlooked. This volume is therefore a vital contribution to a better understanding of the wider European heritage of constitutionalism and liberty. As the editors emphasize in their introductory remarks, *The long chain of medieval estate privileges granted to the nobility gave way to public discourse and political practices which led the establishment of the various forms of mixed/republican government in the early modern period. Moreover, the political reflection which justified this development and promoted freedom under the law for ever-expanding ranks of society survived the collapse of independent states in our region* (p. 2). In the long run these privileges secured some of the key individual rights such as the right of personal inviolability, political rights including participation in the legislative process, the right of the inviolability of property, and religious freedom. Various royal privileges were also granted to different religious and ethnic minorities, such as Jews, Tartars or Armenians. As the editors emphasize, a *spirit of freedom* (p. 19) was to be found in all social circles among Central European societies in the early modern period. This is not to deny the growing serfdom of a large peasant population that was for the most part excluded from proper legal protection and completely excluded from the full enjoyment of civic and individual rights.

The volume presents an extensive selection of legal documents issued in four countries over a period of three centuries. It is especially valuable that they were put together as belonging to the same historical epoch, although they were produced in different political and social contexts. What seems to unite these contexts is recognition of the importance of certain principles that later on were to be associated with constitutional guarantees of basic individual and political rights. At the time, these rights and privileges were not available to everyone and reflected a hierarchical structure of society with a central position secured for the nobility. They had, however, a lasting impact upon the form of government, especially in the Commonwealth of Poland and Lithuania, which was to embody the Ciceronian ideal of *res publica* and which in various forms was practiced throughout Central Europe between the fifteenth and the eighteenth centuries.

Chapter 39 of the Magna Carta states the credo of the modern constitution in Europe and later on in America: *No free man shall be taken or imprisoned, or dispossessed or outlawed or exiled or in any way ruined, nor will we go or send against him except by the lawful judgment of his peers or by the law of the land.*² In the fourteenth century the same right was granted to the Polish nobility (the difference was that instead of a 'free man' the act referred to 'a noble man', the category somehow more limited although it was soon to include around ten percent of Polish society). The sixty-three clauses contained in the Magna Carta had local and universal meaning. The most fundamental of the rules was the idea that the king must be bound by the law of his kingdom, that the law which comes from the ruler is observed by him so that he does not act in a tyrannical way. But it was not the king who willingly signed the Carta; it was the strength of the position of the barons which compelled him to do so, and thus brought to an end the state of civil war. There is a strong similarity between the English barons at Runnymede meadow demanding their liberties and the Polish noblemen in the fourteenth

² A.E.D. Howard (ed.), *Magna Carta. Text and Commentary*, Charlottesville–London 1964, p. 45.

and fifteenth centuries who declared that they would not fight a war or agree to changes in dynastic succession if the king did not grant them certain rights called privileges.

In Central Europe similar developments took place in Hungary, the Czech lands and the Grand Duchy of Lithuania. The Golden Bull of Hungary (Aranybulla) of 1222 issued by King Andrew II who, like King John I in England, was forced by his nobles to accept an act that placed constitutional limits on the power of the monarch. The edict established the basic rights and privileges of the Hungarian nobility and clergymen. Caused by Andrew's excesses and extravagances, the act contains 31 articles reaffirming previously granted rights and bestowing new ones in order to *grant them and other peoples of our Kingdom liberty, by the holy King bequeathed* (p. 52). There is no textual link between the document and the Magna Carta although we may speculate that their affinity is so striking that there must have been some inspiration coming from the English charter.³ Subsequently, as Attila Molnar and Levente Völgyesi stress in chapter one, the 1351 privileges granted by Louis the Great, king of Poland and Hungary, constituted the first written document that secured the same liberty to all noblemen and limited royal and baronial power. The rights of nobility were strengthened by the Jagiellonian King Ladislav at the beginning of the sixteenth century. It was a development parallel to the one which took place in Poland where Louis d'Anjou, king of Hungary and Poland issued one of the first constitutional privileges in 1374. The Kosice privilege was meant to secure the succession to the throne of Poland to one of his daughters starting a 'golden epoch' of privileges granted to the nobility. These early civil rights and tax privileges in both countries strengthened the political and economic role of the nobility and the sense of equality among the nobles whose rights did not depend on ranks. Polish constitutional developments, as discussed by Dorota Malec in chapter three, had a long-lasting impact upon the form and the future of the Polish-Lithuanian Commonwealth, leaving a large segment of the society outside the reach of political rights and legal privileges (p. 143). Like the Great Charter, the privileges in Poland-Lithuania limited royal power, and at the same time they transformed the relationship between the ruler and the nobles into a contractual relationship. Although formally the act of a monarch, in fact they made up a kind of social contract and contained obligations of a binding character supported with the clause on the possibility of renouncing the allegiance to the ruler (the right of resistance). Another feature that both the Magna Carta and the Polish statutes and privileges shared was the fact that they were official documents with more and more detailed provisions. And as the final version of the Magna Carta was to be used as vehicle for legislation, a source of law and liberty, the same could be said of the statutes granted to the Polish nobility. There was, however, one striking difference between the two acts. While Magna Carta was by 1422 confirmed in over fifty councils of parliaments, and had more general application as it referred to the category of 'freemen', the privileges of the Polish nobility were treated as the best weapon of free citizens against *absolutum dominium* and were limited to one social class. And while Magna Carta was to be reinterpreted and adjusted to circumstances (as the very term 'freemen'

³ M. Rady, "Hungary and The Golden Bull of 1222", *Banatica*, vol. 24, no. 2 (2014), pp. 87-108.

was changing), the liberties of the nobility were treated as fixed and unchangeable; they could only be extended.

In a more general sense, constitutional developments in Poland-Lithuania contributed to the victory of republican principles, which was best illustrated by the replacement of the term *regnum* so far was used to describe the Polish Kingdom, with the term 'Respublica' (*Rzeczpospolita*), which highlighted the equality of its members/citizens. The goal of the nobility and the republican political system under the leadership of the king and parliament was to protect and maintain freedom from domination and self-government, which in practice frequently led to a conflict between liberty and the authority. The greatest danger to liberty and constitutionalism, however, came from outside, from the growing absolutism of the neighbouring powers of Russia, Prussia and Austria. The scholarly introductions and the documents presented in the volume clearly show that the various polities within Central Europe lost their freedom because they cherished it too much.

The Czech sources discussed in chapter two are also remarkable as the first of them, the Golden Bull of Sicily, was issued as early as 1212, granting the Kingdom of Bohemia the right to choose their ruler upon hereditary succession and securing the integrity of Czech borders. The Great Privilege of Freedoms of Sigismund of Luxembourg of 1436 confirmed *all earlier estate and provincial privileges* (p. 91); these were similar to the statutes issued elsewhere in Central Europe and in similar circumstances. The Bohemian Confederation of 1619, which was similar to the Warsaw Confederation issued in Poland in 1573, was meant to secure freedom of religion; this was of vital importance for establishing lasting peace at a time when many European polities were engaged in religious conflicts and wars. However, the Renewed Provincial Code of 1627/1628 ceased the constitutional development in Bohemia, restricting the liberties of the estates and establishing an absolutist regime. Here, as in the case of Poland-Lithuania and Hungary in the later epoch, the key danger to liberty came from outside as a consequence of the growing absolutism of the Habsburg rule.

Another interesting development stressed by the authors of the volume and illustrated by excerpts of the most recent constitutional acts of Hungary, Czech Republic and Lithuania is the lasting heritage of liberty under the rule of law. The Preamble of the Constitution of the Republic of Lithuania (1992) makes a clear reference to the legal foundations of Lithuanian statehood and the statutes of the sixteenth century, stressing the continuity between today's Lithuania and the traditions of the Grand Duchy. Similarly, the Fundamental Law of Hungary adopted in 2011 refers explicitly to the old constitution: *We honour the achievements of our historical constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation* (p. 77). The Preamble to the Constitution of the Czech Republic of 1992 stresses *good traditions of the long-existing statehood of the lands of the Czech Crown* (p. 125). A clear reference to the First and the Second Polish Republics is made in the Preamble to the Polish Constitution of 1997. It is a clear sign that the nations of Central and Eastern Europe that faced the discontinuity of their independent statehood in the nineteenth and the twentieth centuries can be proud of their early tra-

ditions of liberty and constitutional development which ran in parallel to that which originated in the British Isles through the Magna Carta. The volume is a much needed contribution to international scholarship on the early modern political traditions of Central Europe and the spirit of liberty that had such a long-lasting impact on political history of the region.

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